



DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Applications for Inclusion on the Lists of Arbitrators under the Data Privacy Framework Program

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before (insert date 60 days after date of publication in the FEDERAL REGISTER).

ADDRESSES: Interested persons are invited to submit written comments to Leo Kim, ITA Paperwork Clearance Officer, International Trade Administration, Department of Commerce, Room 23016RA, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at PRacomment@doc.gov). Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to David Ritchie, Senior Policy Advisor, International Trade Administration, Department of Commerce via e-mail at dpf.program@trade.gov, or by telephone at 202-482-1512.

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States, the European Union (EU), the United Kingdom (UK), and Switzerland share a commitment to enhancing privacy protection, the rule of law, and a recognition of the importance of transatlantic data flows to our respective citizens, economies, and societies, but take different approaches to doing so. Given those differences, the Department of Commerce (DOC) developed the EU-U.S. Data Privacy Framework (EU-U.S. DPF), the UK Extension to the EU-U.S. Data Privacy Framework (UK Extension to the EU-U.S. DPF), and the Swiss-U.S. Data Privacy Framework (Swiss-U.S. DPF) in consultation with the European Commission, the UK Government, the Swiss Federal Administration, industry, and other stakeholders. These arrangements were respectively developed to provide U.S. organizations reliable mechanisms for personal data transfers to the United States from the European Union, the United Kingdom, and Switzerland while ensuring data protection that is consistent with EU, UK, and Swiss law.

The DOC is issuing the EU-U.S. DPF Principles and the Swiss-U.S. DPF Principles, including the respective sets of Supplemental Principles (collectively the Principles) and Annex I of the Principles, as well as the UK Extension to the EU-U.S. DPF under its statutory authority to foster, promote, and develop international commerce (15 U.S.C. 1512). The International Trade Administration (ITA) will administer and supervise the Data Privacy Framework program, including maintaining and making publicly available the Data Privacy Framework List, an authoritative list of U.S. organizations that have self-certified to the DOC and declared their commitment to adhere to the Principles pursuant to the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF. While the decision by an organization to self-certify its compliance pursuant to the EU-U.S. DPF and, as applicable, the UK Extension to the EU-U.S. DPF, and/or the Swiss-U.S. DPF and by extension participate in the Data Privacy Framework program is voluntary; effective compliance is compulsory: organizations that self-certify to the DOC and publicly declare their commitment to adhere to the

Principles must comply fully with the Principles. Such commitments to comply with the Principles are legally enforceable under U.S. law. On the basis of the Principles, Executive Order 14086, 28 CFR part 201, and accompanying letters and materials, including ITA's commitments regarding the administration and supervision of the Data Privacy Framework program, it is the DOC's expectation that the European Commission, the UK Government, and the Swiss Federal Administration will respectively recognize the adequacy of the protection provided by the EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF thereby enabling personal data transfers from each respective jurisdiction to U.S. organizations participating in the relevant part of the Data Privacy Framework program. The EU-U.S. DPF, the UK Extension to the EU-U.S. DPF, and the Swiss-U.S. DPF will not enter into effect until they have respectively received such recognition (i.e., until such formal recognition enters into effect).

As respectively described in Annex I of the EU-U.S. DPF Principles, the UK Extension to the EU-U.S. DPF, and Annex I of the Swiss-U.S. DPF Principles the DOC commits separately with the European Commission, the UK Government, and the Swiss Federal Administration to implement an arbitration mechanism to provide EU, UK, and Swiss individuals with the ability under certain circumstances to invoke binding arbitration to determine, for residual claims, whether an organization has violated its obligations under the Principles as to those individuals. Organizations that self-certify their compliance pursuant to the EU-U.S. DPF, including those that also elect to participate in the UK Extension to the EU-U.S. DPF are obligated to arbitrate claims and follow the terms as set forth in Annex I of the EU-U.S. DPF Principles, provided that an EU or UK (as applicable) individual has invoked binding arbitration by delivering notice to the organization at issue and following the procedures and subject to the conditions set forth in Annex I of the EU-U.S. DPF Principles. Organizations that self-certify their compliance pursuant to the Swiss-U.S. DPF are obligated to arbitrate claims and follow the terms as set forth in Annex I of the Swiss-U.S. DPF Principles, provided that a Swiss individual has invoked

binding arbitration by delivering notice to the organization at issue and following the procedures and subject to the conditions set forth in Annex I of the Swiss-U.S. DPF Principles. An individual's decision to invoke this binding arbitration option is entirely voluntary. Arbitral decisions will be binding on all parties to the arbitration. Under this binding arbitration option, a panel (consisting of one or three arbitrators, as agreed by the parties) has the authority to impose individual-specific, non-monetary equitable relief (such as access, correction, deletion, or return of the individual's data in question) necessary to remedy the violation of the Principles only with respect to the individual. No damages, costs, fees, or other remedies are available. The parties will select the arbitrators from the list(s) of arbitrators described below.

Pursuant to the EU-U.S. DPF and the UK Extension to the EU-U.S. DPF, the DOC and the European Commission will develop and seek to maintain a list of at least 10 arbitrators. The parties, including the EU or UK individual who has invoked binding arbitration, will select arbitrators for the arbitration panel from that list of arbitrators developed under the EU-U.S. DPF (EU-U.S. DPF List of Arbitrators). To be eligible for inclusion on the EU-U.S. DPF List of Arbitrators, applicants must be admitted to practice law in the United States and be experts in U.S. privacy law, with expertise in EU data protection law; and shall not be subject to any instructions from, or be affiliated with, either party, or any participating organization, or the United States, European Union, or any EU Member State or any other governmental authority, public authority, or enforcement authority. Arbitrators will remain on the EU-U.S. DPF List of Arbitrators for a period of 3 years, absent exceptional circumstances or removal for cause, renewable by the DOC, with prior notification to the European Commission for additional 3-year terms.

Pursuant to the Swiss-U.S. DPF the DOC and the Swiss Federal Administration will develop and seek to maintain a list of up to five arbitrators to supplement the list of arbitrators developed under the EU-U.S. DPF. The parties, including the Swiss individual who has invoked binding arbitration, will select arbitrators for the arbitration panel from the list of arbitrators

developed under the EU-U.S. DPF, as supplemented by the list of arbitrators developed under the Swiss-U.S. DPF (Swiss-U.S. DPF Supplemental List of Arbitrators). To be eligible for inclusion on the Swiss-U.S. DPF Supplemental List of Arbitrators, applicants must be admitted to practice law in the United States and be experts in U.S. privacy law, with expertise in European or Swiss data protection law; and shall not be subject to any instructions from, or be affiliated with, either party, or any participating organization, or the United States, Switzerland, European Union, or any EU Member State or any other governmental authority, public authority, or enforcement authority. Arbitrators will remain on the Swiss-U.S. DPF Supplemental List of Arbitrators for a period of 3 years, absent exceptional circumstances or removal for cause, renewable by the DOC, with prior notification to the Swiss Federal Administration for additional 3-year terms.

To be considered for inclusion on the EU-U.S. DPF List of Arbitrators or the Swiss-U.S. DPF Supplemental List of Arbitrators, eligible individuals will be respectively evaluated by the DOC and the European Commission and the DOC and the Swiss Federal Administration on the basis of independence, integrity, and expertise:

Independence:

- Freedom from bias and prejudice.

Integrity:

- Held in the highest regard by peers for integrity, fairness, and good judgment.
- Demonstrates high ethical standards and commitment necessary to be an arbitrator.

Expertise:

- Required expertise:
 - Admission to practice law in the United States.
 - Level of demonstrated expertise in U.S. privacy law and EU and/or Swiss data protection law (as applicable).
- Other expertise that may be considered includes any of the following:

- Relevant educational degrees and professional licenses.
- Relevant professional or academic experience or legal practice.
- Relevant training or experience in arbitration or other forms of dispute resolution.

The DOC has agreed with the European Commission to the adoption of arbitration rules that govern arbitration proceedings and a code of conduct for arbitrators under the EU-U.S. DPF (and similarly agreed with the UK Government as relates to arbitration proceedings under the UK Extension to the EU-U.S. DPF), and the Swiss Federal Administration to the adoption of arbitration rules that govern arbitration proceedings and a code of conduct for arbitrators under the Swiss-U.S. DPF. In the event that the rules governing the proceedings and/or the code of conduct for arbitrators need to be changed, the DOC and the European Commission and the Swiss Federal Administration will agree to amend those rules or adopt a different set of existing, well-established U.S. arbitral procedures, and/or amend the code of conduct for arbitrators (as applicable).

The DOC has selected the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA) (collectively ICDR-AAA) to administer arbitrations pursuant to and manage the arbitral fund identified in Annex I of the EU-U.S. DPF Principles, including as relates to the UK Extension to the EU-U.S. DPF, and Annex I of the Swiss-U.S. DPF Principles. Among other things, the ICDR-AAA facilitates arbitrator fee arrangements, including the collection and timely payment of arbitrator fees and other expenses. On September 15, 2017, the DOC and the European Commission agreed to the adoption of a set of arbitration rules to govern binding arbitration proceedings described in Annex I of the EU-U.S. Privacy Shield Framework Principles, as well as a code of conduct for arbitrators that is consistent with generally accepted ethical standards for commercial arbitrators and Annex I of the Principles. On March 29, 2018, the DOC and the Swiss Federal Administration agreed to the adoption of a set of arbitration rules to govern binding arbitration proceedings described in Annex I of the Swiss-U.S. Privacy Shield Framework Principles, as

well as a code of conduct for arbitrators that is consistent with generally accepted ethical standards for commercial arbitrators and Annex I of the Principles. The DOC has respectively agreed with the European Commission (and the UK Government, as appropriate, with regard to the UK Extension to the EU-U.S. DPF) and the Swiss Federal Administration to adapt those sets of arbitration rules and codes of conduct to reflect the updates under the EU-U.S. DPF (including as applicable to the UK Extension to the EU-U.S. DPF) and the Swiss-U.S. DPF, and the DOC will work with the ICDR-AAA to make those updates.

Applications:

Applications must be typewritten, electronically submitted, and headed “Application for Inclusion on the EU-U.S. DPF List of Arbitrators” or “Application for Inclusion on the Swiss-U.S. DPF Supplemental List of Arbitrators” (as applicable). Applications must include the following information, and each section of the application should be labeled and numbered as indicated below:

- Applicant’s name.
- Applicant’s mailing address, telephone number, and e-mail address.

1. Independence

- Description of the applicant’s affiliations with any organization that has self-certified under the EU-U.S. DPF or the Swiss-U.S. DPF, or the United States, European Union, any EU Member State, Switzerland, or any other governmental authority, public authority, or enforcement authority.

2. Integrity

- The respective names, job titles (as applicable), mailing addresses, telephone numbers, and e-mail addresses of three individuals willing to provide information concerning the applicant’s qualifications for service, including the applicant’s character, reputation, reliability, and judgment.
- Description of the applicant’s willingness and ability to make time commitments

necessary to be an arbitrator.

3. Expertise

- Demonstration of admittance to practice law in the United States.
- Relevant academic degrees and professional training and licensing.
- Current employment, including job title and description of responsibility, as well as name and mailing address of employer, and name, job title, telephone number, and e-mail address of supervisor or other reference.
- Employment history, including the dates and mailing addresses of each prior position and a summary of responsibilities.
- Description of expertise in U.S. privacy law and EU and/or Swiss data protection law (as applicable), and, as appropriate, any other European data protection law.
- Description of training or experience in arbitration or other forms of dispute resolution, if applicable.
- A list of publications, testimony, and speeches, if any, concerning U.S. privacy law and EU and/or Swiss data protection law (as applicable).

II. Method of Collection

Individuals interested in being considered for inclusion on the EU-U.S. DPF List of Arbitrators or the Swiss-U.S. DPF Supplemental List of Arbitrators would submit their applications to the DOC online via e-mail at dpf.program@trade.gov.

The DOC previously requested and obtained approval of analogous information collections that have allowed the DOC, as represented by ITA, to collect information from applicants for inclusion on the EU-U.S. Privacy Shield List of Arbitrators (OMB Control No. 0625-0277) and from applicants for inclusion on the Swiss-U.S. Privacy Shield List of Arbitrators (OMB Control No. 0625-0278). Pursuant to the EU-U.S. DPF, the EU-U.S. Privacy Shield Framework Principles will be amended as the “EU-U.S. Data Privacy Framework Principles”; and pursuant to the Swiss-U.S. DPF, the Swiss-U.S. Privacy Shield Framework

Principles will be amended as the “Swiss-U.S. Data Privacy Framework Principles”.

Organizations that self-certified their commitment to comply with the EU-U.S. Privacy Shield Framework Principles and/or the Swiss-U.S. Privacy Shield Framework Principles that wish to enjoy the benefits of participating in the EU-U.S. DPF and/or the Swiss-U.S. DPF (as applicable) must comply with the amended Principles once those amendments have entered into effect. More information on the binding arbitration option under the Data Privacy Framework program will be made available on the DOC’s Data Privacy Framework program website (<https://www.dataprivacyframework.gov/>) once that is launched; however, such information will also be made available, as appropriate, on the DOC’s Privacy Shield program website (<https://www.privacyshield.gov/welcome>).

III. Data

OMB Control Number: New collection. Not yet assigned.

Form Number(s): None.

Type of Review: Regular submission, new information collection.

Affected Public: Private individuals.

Estimated Number of Respondents: 36.

Estimated Time Per Response: 240 minutes.

Estimated Total Annual Burden Hours: 144.

Estimated Total Annual Cost to Public: \$0.

Respondent’s Obligation: Required to obtain or retain benefits.

Legal Authority: The DOC’s statutory authority to foster, promote, and develop the foreign and domestic commerce of the United States (15 U.S.C. 1512).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the

accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request (ICR). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

*Department PRA Clearance Officer,
Office of the Under Secretary for Economic Affairs,
Commerce Department.*

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